

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

MARKEISHA SEAGRAVES v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 2001-B-1152 Steven R. Dozier, Judge

No. M2008-01803-CCA-R3-PC - Filed March 12, 2009

This matter is before the Court on the State's motion to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The Petitioner, Markeisha Seagraves, appeals the post-conviction court's dismissal of her petition for post-conviction relief. Upon our review of the record in this case, we conclude that the Petitioner failed to satisfy the applicable statutory timing requirements and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the post-conviction court is affirmed.

**Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed Pursuant to Rule 20, Rules of
the Court of Criminal Appeals**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JERRY L. SMITH, and THOMAS T. WOODALL, JJ, joined.

Markeisha Seagraves, Pro se, Nashville, Tennessee.

Robert E. Cooper, Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General, for the Appellee, State of Tennessee.

MEMORANDUM OPINION

According to the record, on July 11, 2002, the Petitioner pled guilty to second-degree murder, and the trial court sentenced her to seventeen years in the Tennessee Department of Correction. The Petitioner did not directly appeal her conviction. On June 17, 2008, the Petitioner filed a pro se petitioner for post-conviction relief, which the post-conviction court found to be untimely filed, and it dismissed the petition. The Petitioner timely filed this appeal of the post-conviction court's denial of post-conviction relief.

Tennessee Code Annotated section 40-30-102 governs actions for post-conviction relief. The section provides, in pertinent part:

(a) Except as provided in subsections (b) and (c), a person in custody under a sentence of a court of this state must petition for post-conviction relief under this part within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of the petition shall be barred. The statute of limitations shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity. Time is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter, and the one-year limitations period is an element of the right to file the action and is a condition upon its exercise.

(b) No court shall have jurisdiction to consider a petition filed after the expiration of the limitations period unless:

(1) The claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required. The petition must be filed within one (1) year of the ruling of the highest state appellate court or the United States Supreme Court establishing a constitutional right that was not recognized as existing at the time of trial;

(2) The claim in the petition is based upon new scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or

(3) The claim asserted in the petition seeks relief from a sentence that was enhanced because of a previous conviction and the conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid, in which case the petition must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid.

T.C.A. § 40-30-102 (2006).

In the case under submission, the judgment against the Petitioner became final on August 10, 2002, thirty days after the judgment was entered against her. *See* Tenn. R. App. P. 4; Tenn. R. Crim. P. 32(f). The Petitioner filed no appeal of her conviction. Therefore, the limitations period in which

she could file for post-conviction relief began to run on August 10, 2002, and expired on August 10, 2003. T.C.A. § 40-30-102(a). Petitioner filed the petition at issue on June 17, 2008, nearly five years past the expiration of the permissible filing period set forth in the statute. The statute removes from all courts jurisdiction to consider post-conviction petitioner after the expiration of the limitations period unless one of three enumerated exceptions, reproduced above, applies. *See* T.C.A. § 40-30-102(b). The Petitioner has failed to assert any of these exceptions for tolling the statute. She cites no new constitutional rule, refers to no new scientific evidence, and makes no claim that an earlier conviction has been overturned. *See* T.C.A. § 40-30-102(b)(1)-(3). Thus, no grounds exist as an exception to the statute of limitations.

Accordingly, the State's motion is hereby granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE